UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

WRS ENVIRONMENTAL SERVICES INC.

and **Case 29–CA–144985**
29–CA–150191

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 1049

Brent Childerhose, Esq., for the
General Counsel.
Martin Gringer, Esq. and *Brian G. Klein, Esq*.,
for the Respondent.

DECISION

Statement of the Case

RAYMOND P. GREEN, Administrative Law Judge. I heard this case on November 23 and 24, 2015, in Brooklyn, New York. The charge in Case 29–CA–144985 was filed on January 22, 2015, and the charge in Case 29–CA–150191 was filed on April 13, 2015. The complaint that was issued on August 21, 2015, alleged in substance:

1. That on or about October 27 and November 28, 2014, the Respondent by its supervisor, Joseph Robinson (a) created the impression that the employees' concerted activities were under surveillance, and (b) threatened employees with unspecified reprisals if they continued to talk to each other about improving terms and conditions of employment.

2. That on or about December 10, 2014, the Respondent, for discriminatory reasons, laid off Anthony Gallo.

Based on the record as a whole, including my observation of the credibility of witnesses and after considering the arguments of counsel, I hereby make the following

Findings and Conclusions

I Jurisdiction

It is agreed by all parties and I find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. There is also no dispute that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II The alleged unfair labor practices

The Company is engaged in the business of cleaning up environmental spills and waste. Its principle customers are gas and electric utility companies; the main one being PSE&G, which took over certain utility functions from National Grid. The Company's areas of operations are in

Long Island, Queens, and Edison, New Jersey. Its main office is located at Yaphank, New York.

The chief executive officer is Michael Rogers and he is in overall charge of the Company's operations. Anthony Nozzolillo is the chief financial officer and his job is to account for and take care of the money. Ralph Ranghelli is the Company's executive vice president. He is in charge of operations and labor relations. Joanne Klaus is in charge of dispatching and the two working foremen are Joseph Famiglietti and Joseph Robinson. The working foremen are the people who generally go out to check up on and when necessary, supervise the workers who work in teams while in the field. They report to Kraus and Ranghelli. For what it's worth, I note that Ranghelli, at an earlier time, was the general manager of the Union.

I note here that because the Company's services are performed in relation to electric utility transformers and power lines, there is always a risk of serious injury. As a result, both the Respondent and the utility company are extremely cognizant of safety issues. At about the same time that the events were happening in this case, PSE&G was reminding its contractors including the Respondent that it was imposing a zero tolerance policy regarding safety. It also reminded the Company that it could be replaced.

The Company has maintained a collective-bargaining relationship with International Brotherhood of Electrical Workers, Local Union 1049 for at least 12 years. It also maintains contracts with four other unions.

The evidence suggests that the Company's relationship with the Charging Party has been one with little or no friction. There is no history of prior unfair labor practices and it seems that grievances have been resolved without the necessity of utilizing arbitration. Thus, the Respondent describes this long-term relationship as being cooperative and therefore would hardly give rise to an inference that the Company had any antiunion animus. But from the General Counsel's point of view, he argues that if this relationship was a warm one, then perhaps it became a little too cozy; thereby becoming somewhat fragile if employee attitudes changed.

The most recent contract between the Company and the Union ran from February 4, 2013 to February 3, 2015. At the time of the hearing, the parties were engaged in contract negotiations and by mutual consent the collective-bargaining agreement had been extended. The employees covered by the terms of the contract are environmental equipment operators, journeymen lead workers, lead worker helpers, environmental technicians, technician helpers, and environmental laborers. Also included in the unit and covered by the terms of the contract are the two working foremen. The wage range for this group of people, as of February 4, 2014, runs from $17.61 per hour for a laborer to $32.60 per hour for a journeyman lead worker. The wage rate for the foremen is $34.44 per hour. Although there were no full-time equipment operators, when one of the employees was called upon to operate a piece of equipment other than a truck, he was paid at the rate of $34.04 per hour.

As noted above, the working foremen are members of the Union and their wages and conditions of employment are governed by the collective-bargaining agreement. The two people who occupied this position at the time of these events were Joseph Famiglietti and Joseph Robinson. At the hearing, the Respondent conceded that Robinson was, in fact, a supervisor within the meaning of Section 2(11) of the Act. It asserted, however, that Robinson was a low level supervisor and that he played no role in the decision to discharge or lay off Gallo. Obviously, as a supervisor and as a union member whose wages and benefits are

governed by the collective-bargaining agreement, Robinson's situation vis-a`-vis the other employees was somewhat ambiguous and conflicted.

One aspect of the collective-bargaining agreement is that there is no guarantee that employees will have a defined workweek. That is, because a large portion of the Company's business is responding to emergency calls, it is impossible to tell, at any given moment, the amount of work that will be generated at any given time. Thus, employees may work more or less than 40 hours a week depending on the number of emergency calls that are received. The testimony was that although the work can be sporadic, the Company makes an attempt to smooth out the amount of work so that all of its employees, depending of course on their skill sets, get a fair share. The person who is responsible for distributing work assignments to the employees is Joanne Krauss.

Under the terms of the collective-bargaining agreement, the Union can appoint a shop steward who has super-seniority for purposes of layoffs. Until the events that are described in this case, the shop steward was Kenny Reynolds. However, Reynolds suffered a work related injury and was assigned to the office as a form of light duty. Because Reynolds moved from a field position to a temporary position within the office, some employees mistakenly perceived that he became part of management.

Another aspect of the work situation is that because the Company must be available to respond to emergencies every day and at any hour, employees are asked to volunteer to be available on weekends. And if they volunteer and are called upon to respond to an emergency, they are paid at either a 1-½ multiple for Saturday work or a 2 multiple for Sunday work. If an employee volunteers to be available on a particular weekend, then he will be called first for a job, in which case, he can earn overtime. If an employee chooses not to volunteer for weekend work, then the Company will only call him if it runs out of volunteers. Obviously, if an employee volunteers to be available for weekend work, the Company expects that he will be available if called. The contract provides that "when requested by the Employer, employees may be placed 'on-call' during anticipated emergency work" and that "for each 12 hour period or part thereof during which an employees is 'on-call' he shall receive 2 hours pay at straight time."

Because there is the need to have a sufficiently large work force to handle emergency situations on a moment's notice and because many of the jobs involve extensive training (in some cases lasting for many years), the Company is and has been extremely reluctant to lay off workers. Indeed, the testimony was that at no time in the past has the Company laid off any workers for purely economic reasons. In the few instances where a person has been laid off, the situations were de facto discharges which were called layoffs so that the affected persons could collect unemployment benefits.

In or about May 2014, the Respondent hired an employee named Daniel Wickard who started as a technician's helper but was shortly moved up to a technician's job. After a period of time, he talked to other employees about various issues relating to pay and then visited the Union to obtain a copy of the collective-bargaining agreement.

On October 21, 2014, the Union held a general membership meeting which was attended by Wickard. Subsequent to this meeting Wickard began compiling a list of employee complaints and concerns with the object of presenting these to the Union at a later time.

On October 23, 2014, Wickard along with two other employees, Anthony Gallo and Kenny Horvath, were involved in an incident that led to their disciplines. There is no dispute that

these employees breached certain safety rules and there is no contention that these warnings violated the Act. After this incident, the evidence was that Wickard became super careful about safety matters. The warnings that ultimately were issued to these employees were signed by Robinson.

According to Wickard, he had a conversation with foreman Robinson on or about October 27, 2014. He states that during this conversation, Robinson said that he understood that Wickard had been griping to the Union and that he had been complaining about not getting the correct pay rate. Wickard testified that Robinson went on to say that the contract was coming up for negotiation but that the men are going to back down. He asserts that Robinson said that the men would not rally together or strike and that the Union is "not really there for you; they are just there for the money."

Robinson's version of this conversation is really not that much different. He denied that he told Wickard that he had heard about his griping or that he said anything about the Union only wanting money. Nevertheless, Robinson testified that he did have a conversation about the pros and cons of going on strike and that he told Wickard that during the last negotiations there was a strike vote but that the employees had voted against it.

The Union held another meeting on November 6, 2014, and this time, at least 10 of the Respondent's employees attended. These included Wickard and Gallo, but not Robinson or the other foreman, Joseph Famiglietti. At this meeting, the employees met with union representatives, Don Daley and Pierce Brennan. According to Wickard, the union representatives stated that they were "shocked" that so many of the employees showed up and that they should "stand together." Gallo testified that Brennan said that in the past the employees hadn't stuck together and hadn't shown solidarity. (This is pretty much the same thing that Robinson told Wickard in the October conversation.)

After this meeting, Wickard continued to talk to other employees and began compiling a list of issues that he intended to bring to the Union in anticipation of the upcoming contract negotiations.

The next union meeting was held on November 20 and this time, foremen Robinson and Famiglietti were not invited. Also not invited was Kenny Reynolds, who at that time was the union shop steward. As noted above, because of an injury, Reynolds was working in the office and some of his fellow employees mistakenly concluded that he was now part of management.

The testimony was that the employees who were most outspoken at the November 20 meeting were Wickard, Gallo, Mike Asarisi, and Enrique Umanzor. (Umanzor essentially acted as a spokesman for the Spanish speaking employees.) Nevertheless, the evidence also shows that many of the other employees also made comments. At this meeting, employees expressed the opinion that Kenny Reynolds should be replaced as the shop steward and after some suggestions, Wickard was chosen. In addition, employees expressed their concern that because Robinson was a union member he should not be involved in disciplining employees. The General Counsel's witnesses suggested that an employee named Kevin Pollard was recording the meeting. However, there was no evidence that he did so except for the observation that Pollard was unusually quiet during this meeting.

Gallo testified that on or about November 28, Robinson asked to speak to him privately. He testified that Robinson said that a lot of people had been telling him that Gallo was complaining about his wages, his hours, and his job in general. Gallo testified that he asked

who and Robinson said that he couldn't say. According to Gallo, he told Robinson that a lot of the guys feel the same way to which Robinson replied that the last time the Union had a [strike] vote, the Company won and the Company was going to win again. Gallo states that Robinson told him that he would not be able to count on the other employees when it came time to vote and that he (Gallo) should be careful as to what and with whom he was getting mixed up with.

On December 2, Union Agent Brennan had a telephone conversation with Ralph Ranghelli, who as noted above was the Company's executive vice president *and* the former boss of Local 1049. The credited evidence is that Brennan said that employees were complaining about Robinson acting as a supervisor and issuing discipline. Ranghelli responded that any disciplinary warnings signed by Robinson were a mistake and would be rectified. Brennan then stated that it was too late for that and that the Union was going to bring Robinson up on intraunion charges. Ranghelli responded that the employees who were disciplined had acknowledged that they were wrong and that this was "chicken shit." Expressing his displeasure, Ranghelli said that there would be a price to pay. When Brennan asked if this was a threat, Ranghelli said it was not, but there would be an issue about it.

On December 5, the Union sent out several letters. These involved removing Reynolds as the shop steward and appointing Wickard in his place. One of the letters was addressed to the Company and stated that Wickard was to be the new shop steward. According to Brennan, these letters were hand delivered to the post office at around 5 p.m. on Friday.

There is some doubt as to when the letter to the Company was actually received and this makes a difference because the alleged layoff of Gallo (and the three others) occurred on December 10. Although the testimony was that the letters were dropped off at the post office on the evening of Friday, October 5, the date stamp on one of the letters indicates that they were processed at the post office on Monday, December 8. Thus, there is a good chance that the letter addressed to the company was delivered on December 9. But there is also a chance that it was received on December 10.

On December 10 the Respondent laid off Wickard, Gallo, Asarisi, and Umanzor. Wickard testified that on this day, he was at a jobsite and was told to report back to the office at the end of the day. Wickard states that he was told by Rogers and Ranghelli that he was being laid off in New York, but that could transfer to the Company's operation in New Jersey.

Gallo testified that he was called to a meeting with Rogers and Ranghelli who told him that they were going to try something that they had never done before, which was layoffs.

The four employees who were laid off were also told that they would be recalled when work picked up again. In this regard, Asarisi and Umanzor were recalled when a large emergency project emerged in late December.

The Respondent offered its reasons for deciding to have the layoff and the reasons for why it chose Gallo and the other three employees for the layoffs. This will be discussed in the next portion of the decision.

III Analysis

The General Counsel contends that the Respondent violated Section 8(a)(1) of the Act by two conversations between foreman Robinson and employees Wickard and Gallo, respectively on October 27 and November 28, 2014. He alleges that Robinson "created the

impression of surveillance when, in conversations with these two employees, he said that he understood that they had been griping to the Union and that he had heard from other employees that they were complaining about their wages.

The problem with this theory is that Robinson, in addition to being a supervisor, was also a member of the Union. His wages and conditions of employment are also set by the collective-bargaining agreement and therefore his own economic interest was in having the employees strongly support the Union. He therefore would be as interested in union or contract issues as any of the other unit employees, and as a union member he can and does attend union meetings. Under these circumstances, I don't think that it is reasonable for employees to construe his expressed interest in wage or union issues as being an indication that he would be spying for management.

Nor do I think that Robinson threatened employees with reprisals. In my opinion, the evidence shows that he told both Wickard and Gallo essentially the same thing that Union Agent Brennan told the other employees: To wit, that in the past, the Company has come out ahead in contract negotiations because the employees had not been willing to stick together and engage in a strike. Taken in its totality, I think that Robinson's statements more readily reflect his disappointment with his fellow employees' lack of union support. I do not think that they could reasonably have been construed as being a threat of reprisal.

Based on the above, I conclude that as to these allegations of the complaint, the General Counsel has failed to meet his burden of proof and therefore I shall recommend that they be dismissed.

As to the alleged discriminatory layoff of Gallo, the General Counsel states that even though the Complaint alleges only his layoff, it his theory that all four layoffs were motivated by an intent to retaliate against employees for their union activity. He asserts that no adverse conclusion should be drawn from the fact that the complaint does not allege that the other three employees were unlawfully laid off or that the General Counsel concedes that those layoffs were justified by lawful economic reasons. And in this respect, I agree with the General Counsel. In the case of Wickard, he entered into and was satisfied with a separate settlement agreement that he made with the Respondent. And as to the other two individuals, they apparently have returned to work and may very well have decided not to participate or cooperate in this case.

There are, in my opinion, two questions to be answered. Was the decision to lay off the four employees motivated by a desire to influence employees as to their union support and the upcoming negotiations? Secondly, if the decision was motivated by purely economic and nonunion related reasons, did the Respondent select Gallo for layoff because of his union or concerted activity? If the answer to the first question is yes, then we need go no further. Notwithstanding the fact that the complaint does not allege the discriminatory layoff of the other three employees, the discharge of Gallo would be unlawful if it is concluded that the decision to lay off these employees was motivated by union related considerations. If however, the answer to the second question is that the Company, insofar as its decision to have layoffs, was motivated *only* by nonunion related considerations, then the General Counsel would have to prove that a reason for selecting Gallo was because of his particular union or concerted activity.

In deciding cases of alleged discrimination, the Board uses the analysis described in *Wright Line*, 251 NLRB 1083 (1980), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). Under this test, the General Counsel has the burden of establishing that

an employee's protected concerted activity or union conduct was a motivating factor in the employer's decision to take action against him. In the event that the General Counsel succeeds in establishing this, then the burden is then shifted to the Respondent to show that it would have taken the same action in the absence of the protected employee conduct.

In order to ascertain whether the General Counsel has met his initial burden, the Board has relied on a number of factors. These include whether the alleged discriminatee has engaged in union or concerted conduct; whether the employer had knowledge of that activity; whether the employer demonstrated animus toward the employee activity; whether the animus was shown to have contributed to the decision to take adverse action against the employee; and timing of the adverse action in relation to the protected conduct. *Praxair Distribution*, *Inc.*, 357 NLRB No. 91, slip op. 1 fn. 2 (2011); *Central Valley Meat Co.*, 346 NLRB 1078, 1093 (2006); *Director, Office Workers' Compensation Programs Greenich Collieries*, 512 U.S., 267, 268 (1994), clarifying *NLRB v. Transportation Management* and *Wright Line*, above.

It should also be pointed out that this is a civil case. Therefore, the General Counsel assumes a burden that is defined as requiring a "preponderance of the evidence." The General Counsel is not required to prove his case beyond a "reasonable doubt." Thus, in establishing a prima facie case, the General Counsel can meet his burden by providing circumstantial evidence and need not prove each and every element, either by direct evidence of by evidence beyond a reasonable doubt. For example, in the absence of an admission, the General Counsel is not compelled to show that the evidence establishes beyond a reasonable doubt that the Respondent had knowledge of the alleged discriminatee's union or concerted activities.

In the present case, it is my belief that the General Counsel has met his burden of making a prima facie of illegal discrimination. In my opinion, the General Counsel has provided sufficient, if not particularly strong evidence to show that the Respondent's probable motivation in laying off Gallo was due to a concern that its employees were getting restless and that they might take more action than in the past when the contract came up for renegotiation.

The evidence shows that the employees, and in particular Wickard, raised various concerns about wages and other terms and conditions of employment during the period from October to late November 2014. These were expressed at union meetings, the last of which occurred on November 20, 2014.

There is no doubt that foreman Robinson was aware of this activity. And as a supervisor, I conclude that his knowledge is imputable to the Respondent. In this regard, although the Respondent asserts that Robinson was a low level supervisor, the evidence shows that he is one of two foremen who go out into the field to direct the work crews. These foremen are responsible for reporting safety issues and it seems to me that he would likely report other activities as well.

In any event, the evidence also shows that on December 2, Union Agent Pierce Brennan had a conversation with Ranghelli during which he said that employees were concerned about Robinson issuing warnings inasmuch as he was a union member. He told Ranghelli that he was going to bring Robinson up on intraunion charges and elicited the response that this was "chicken shit." Although this conversation did not go further and Brennan did not discuss what other complaints he had received from employees, Ranghelli's response does indicate at least some measure of displeasure.

There is some doubt that the letter from the Union replacing the existing shop steward with Wickard reached the Company before the decision to lay off employees was made. If the time stamp on one of the envelopes shows that the letter was processed in the post office on Monday, December 8, it would be more likely than not that this was received on or before December 10.

With respect to the four layoffs, the Respondent's position is that the decision was prompted by economic considerations and that once that decision was made, the choice of who to lay off was made on the basis of a variety of factors relating to employee work performance. In this regard, there is no contention that the decision to lay off employees was motivated by the set of warnings that were issued back in October; only that once the decision was made, the selection of who to layoff was influenced by that incident as well as other factors. [1]

The Respondent offered the testimony of Anthony Nozzolillo its chief financial officer who stated that somewhere around the summer of 2014, he realized that the Company was not meeting its profitability goals. He states that he began to make proposals to Rogers and Ranghelli about how to generate more fixed income and how to make savings. Nozzolillo testified that he continuously bitched to Rogers and Ranghelli about the need to cut expenses including labor costs. According to Nozzolillo, he met with resistance because Rogers and Ranghelli indicated that neither liked to lay people off. He testified that when he brought up the idea of cutting labor costs, Rogers kept saying; "let's wait and see." According to Nozzolillo, he had no input as to whom to layoff or as to when the layoffs were to occur. He testified that from his perspective, the sooner the better, because labor was a major element in the cost structure of the Company.

Although asserting that the layoffs were necessitated by a reduction in the amount of work and the need to reduce labor costs, the evidence is that labor costs were not in any significant way reduced by having the layoffs. Because so much of its work is in response to emergencies, the Company requires a larger work force than what would be required if it had a fixed and steady workflow. Moreover, employees are not guaranteed any fixed or minimum hours of work and get paid only if they are assigned to specific jobs. Thus, if employees are not assigned to work, they are not paid. Therefore, having additional employees on staff, does not translate into additional company costs. In this regard, I note the following colloquy with Ranghelli:

> Judge Green: I'm kind of curious. Did the Company save any money by having these four layoffs?
>
> The Witness: I would venture to say not a significant amount of money.
>
> Judge Green: It sounds like you couldn't have save[d] any money because they weren't being scheduled to show up; so even if they hadn't been laid off, they weren't scheduled to show up. They wouldn't get paid anyway.
>
> The Witness: Right.

[1] Among the factors listed for choosing Gallo was the October safety incident and the fact that on several past occasions when he volunteered to be "on call" for weekends, he was not actually available when needed.

Judge Green: So you're not saving money on salaries or wages by having a layoff?

The Witness: Correct.

The Respondent's managers asserted that it was decided to lay off four people because given the reduction in work, they were concerned that they might lose their more experienced employees to competitors if they had to divide the available work hours by a larger number of employees. It was asserted that a number of senior employees were complaining about reduced hours. But when asked who was making such complaints, the name of only one person was offered. This was Karol Horvath and he was not called as a witness to corroborate this assertion. Nor was any evidence offered to suggest that any employees, including Horvath, were threatening to quit because of reduced hours.

The bottom line is that laying off these four employees would not have saved the Company any money. Nor does the evidence show that there was, in fact, a groundswell of discontent by more senior employees who were indicating that they might quit unless they obtained more hours. The fact is that in the past the Company has never laid off anyone for economic reasons. The only time anyone can remember a layoff occurring is when an employee was going to be discharged for cause and this was described as a layoff so that the employee could collect unemployment insurance.

In my opinion, the managers of this Company are good people. They pay their employees well; they seem to have gotten along with the Union; and they show a strong degree of concern for employee safety.

Nevertheless I am going to conclude that the General Counsel has made a prima facie showing that the Respondent, in deciding to have these layoffs, acted out of a fear that the Union might be more demanding in the upcoming contract negotiations and that unlike in the past, the employees might be willing to engage in a strike. I also think that these fears were exacerbated by the fact that its major customer had been telling Respondent's management that the Company was replaceable. [2]

So, having determined that the General Counsel has made out a prima facie case, I conclude that the Respondent has not met its burden of showing that it would have engaged in the actions taken in the absence of the protected employee conduct. I shall therefore conclude that in this respect, the Respondent has violated Section 8(a)(3) and (1) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

[2] If it was only concerned about "economic" issues, the Respondent could have accomplished the result without laying off anyone. It could simply have assigned less work to these employees and no one would have been the wiser. But doing that would not have sent a message to the other employees that supporting the Union might have adverse consequences for them.

Having concluded that the Respondent unlawfully laid off Anthony Gallo on December 10, 2014, it must offer him reinstatement and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him.

Backpay shall be computed in accordance with *F. W. Woolworth Co.,* 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons,* 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB No. 8 (2010).

The Respondent shall be required to remove from its files any and all references to the unlawful layoff and notify Anthony Gallo in writing that this has been done and that the unlawful action will not be used against him in any way.

The Respondent shall file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters. The Respondent shall also compensate Anthony Gallo for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than one year. . *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014).

In addition to the standard remedy, the General Counsel seeks a remedy that would require the Respondent to reimburse Anthony Gallo for the search for work and work related expenses resulting from his layoff. In this regard, the General Counsel concedes that this is contrary to existing Board precedent. Therefore, the General Counsel is asking me to deviate from current Board law, a position that I am unable to take. This is something that has to be addressed to and decided by the Board.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended [3]

ORDER

The Respondent, WRS Environmental Services Inc., located in Yaphank, New York, officers, agents, and representatives, shall

1. Cease and desist from

(a) Laying off or otherwise taking adverse actions against employees because of their membership in or support for International Brotherhood of Electrical Workers, Local Union 1049.

(b) In any like or related manner interfering with, restraining or coercing employees in the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make Anthony Gallo whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this decision.

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Within 14 days from the date of this Order, offer Anthony Gallo, full reinstatement to his former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(c) Remove from its files any reference to the unlawful action against Anthony Gallo and within 3 days thereafter, notify him in writing, that this has been done and that the layoff will not be used against him in any way.

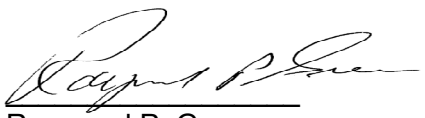
(d) Reimburse Anthony Gallo an amount equal to the difference in taxes owed upon receipt of a lump-sum backpay payment and taxes that he would have been owed had there been no discrimination against him.

(e) Submit the appropriate documentation to the Social Security Administration so that when backpay is paid to Anthony Gallo it will be allocated to the appropriate periods.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post its Yaphank, New York facility, copies of the attached notices marked "Appendix."[4] Copies of the notices, on forms provided by the Regional Director for Region 29, after being signed by the Employer's authorized representative, shall be posted by the Employer and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Employer customarily communicates with its employees by such means. Reasonable steps shall be taken by the Employer to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Employer has gone out of business or closed the facilities involved in these proceedings, the Employer shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Employer at any time since December 10, 2014.

Dated, Washington, D.C. February 1, 2016



Raymond P. Green
Administrative Law Judge

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Appendix

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.
To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT lay off or otherwise take adverse actions against employees because of their membership in or support for International Brotherhood of Electrical Workers, Local Union 1049.

WE WILL NOT in any like or related manner interfere with, restrain or coerce employees in the rights guaranteed to them by Section 7 of the Act.

WE WILL make Anthony Gallo whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest.

WE WILL within 14 days from the date of this Order, offer Anthony Gallo, full reinstatement to his former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL remove from our files any reference to the unlawful action against Anthony Gallo and within 3 days thereafter, notify him in writing, that this has been done and that the layoff will not be used against him in any way.

WE WILL reimburse Anthony Gallo an amount equal to the difference in taxes owed upon receipt of a lump-sum backpay payment and taxes that he would have been owed had there been no discrimination against him.

WRS Environmental Services Inc.

_____
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

Two MetroTech Center
Jay Street and Myrtle Avenue
Brooklyn, NY 11201-4201
718-330-2862. Hours: 9 a.m. to 5:30 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/29-CA-144985 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 718-330-2862.